

ELMER L. CONRAD AND OTHERS

MARCH 19, 1958.—Committed to the Committee of the Whole House and ordered to be printed

Mr. POFF, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 7746]

The Committee on the Judiciary, to whom was referred the bill (H. R. 7746), for the relief of Elmer L. Conrad and others, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to pay the amounts stated in the bill to the persons named in settlement of their claims against the United States for refunds of amounts erroneously withheld from their wages during the period of September 30, 1946 through September 30, 1947 and paid to the United States as employment tax under the Federal Insurance Contributions Act.

STATEMENT

The persons named in the bill were employed by the Rochester Veterans' Emergency Housing, which was a public housing project, during the period stated in the bill. At that time the managing agent of the project, Mr. Follett L. Greeno, was under the supervision of the New York State Division of Housing, and in accordance with its instructions deductions were withheld from employees' wages for social security and State unemployment taxes, and remittances were made to the United States collector of internal revenue.

On February 20, 1948, Mr. Follett L. Greeno was advised in a letter from the district internal-revenue office that Federal employment taxes were not applicable to the project, and he was requested not to remit any further taxes deducted under the Social Security Act. A totally inconsistent direction was received on November 23,

1948, from Internal Revenue requiring Mr. Greeno to file an affidavit setting forth why no tax remittances had been filed since February 20, 1948, and to pay all accumulated taxes for that period immediately. This direction was complied with, and regular remittances were resumed.

In March of 1950 Mr. Greeno received a letter which referred to the letter of February 20, 1948, and called attention to the applicable statute of limitations concerning recovery of "taxes erroneously paid." He forwarded this letter to the New York State Division of Housing and requested instructions. He was instructed to file a claim for refund, but the refund for the amounts paid during the period described in the bill was refused since the statute of limitations had run.

The total amount payable to the former employees named in the bill is \$432.07. This amount was not refunded due to the fact that the time for the filing such claims had expired before the claim by the Rochester Veterans' Emergency Housing was filed. The Treasury Department in its report to this committee on the bill has indicated that it is opposed to the bill's enactment for the reason that this limitations period had run.

The contradictory positions taken by the Bureau of Internal Revenue, and the confusion engendered by their directions to Mr. Greeno, are the primary causes for this matter being brought to the Congress. In particular, the direction of November 23, 1948, impelled a conclusion that payment of the taxes in question was required, and a subsequent letter noting that the time within which to apply for the return of "taxes erroneously paid" was about to expire only served to compound the confusion. In the light of these facts this committee concludes that the relief provided for in the bill should be granted, and accordingly recommends that the bill be considered favorably.

TREASURY DEPARTMENT,
Washington, D. C., August 5, 1957.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: This letter is in response to your requests of May 28 and May 29, 1957, for the views of the Treasury Department on H. R. 7738 (85th Cong., 1st sess.) entitled "A bill for the relief of the State of New York" and H. R. 7746 (85th Cong., 1st sess.) entitled "A bill for the relief of Elmer L. Conrad and others."

H. R. 7738, if enacted, would authorize the Secretary of the Treasury to pay to the State of New York the sum of \$432.07 in full settlement of its claims against the United States for refund of employment tax under the Federal Insurance Contributions Act during the period of September 30, 1946, through September 30, 1947, which refund was rejected because it was barred by the statute of limitations.

H. R. 7746, if enacted, would authorize the Secretary of the Treasury to pay an aggregate of \$432.07 (in sums ranging from 14 cents to \$33.06) to Elmer L. Conrad and 34 other named individuals in full settlement of their claims against the United States for a refund of employment tax under the Federal Insurance Contributions Act withheld from their wages during the period of September 30, 1946, through September 30, 1947, which refunds were refused because barred by the statute of limitations. Both bills provide that no part

of the amount appropriated therein shall be paid to any agent or attorney in connection with the claims.

These two bills would obtain substantially the same result as H. R. 1093 (84th Cong., 2d sess.) entitled "A bill for the relief of Follett L. Greeno" the enactment of which was not favored by this Department for the reasons set forth in this Department's report of May 21, 1956, on H. R. 1093 to your committee.

The employee and employer taxes involved in this case were paid for the period of September 30, 1946, through September 30, 1947, by Mr. Follett L. Greeno as managing agent of the Rochester emergency housing project which was operated by the city of Rochester, N. Y. The records of the Internal Revenue Service indicate that, in April 1947, and at various prior times, Mr. Greeno was asked by the district director's office at Buffalo, N. Y., to forward certain documents relating to the housing project in order to ascertain whether employment in such project was exempt from taxes imposed by the Federal Insurance Contributions Act (FICA). Mr. Greeno advised that he had no authority to furnish such documents. On August 18, 1947, the district director's office at Buffalo informed Mr. Greeno:

"* * * that a decision has not yet been reached * * * as to the taxable status of housing projects similar to yours * * *. However, if you care to continue to forward the tax you may do so and you will be advised as soon as possible re your liability."

On February 20, 1948, the district director's office wrote to Mr. Greeno and informed him that the taxes imposed by the FICA did not apply to his project because of an exemption for service performed in the employ of a State or any of its political subdivisions and further stated:

In the future, please do not remit to this office any further tax deducted under the Social Security Act."

On March 25, 1948, the district director's office forwarded to Mr. Greeno a prepared form of claim for refund of the FICA taxes involved here but this refund claim was not filed.

Copies of correspondence from Mr. Greeno to others, which are contained in the Service's files, indicate that during the period involved in this case Mr. Greeno contended, contrary to the prior ruling of the district director's office, that the employment taxes were properly payable in order that the employees would be covered by social security. It does appear that on November 23, 1948, a deputy collector on a personal field investigation advised Mr. Greeno that FICA taxes were applicable to employment in the Rochester emergency housing project but the records of the Service do not indicate the ground upon which the deputy collector purported to act.

On March 3, 1950, the district director's office again wrote to Mr. Greeno to advise him that the taxes previously paid by him had been placed in a suspense account awaiting a claim for refund, and that:

"* * * the statute of limitations for the recovery of this money is 4 years. Your failure to make and file the necessary claim for refund within the 4-year period will bar any rights you may have for recovery of this money."

At the time the above letter was written it appears that there still remained almost 10 months before the statute of limitations would have barred refund of the taxes collected during the earliest period involved here (i. e., the quarter ended December 31, 1946) and that

there still remained about 19 months before the statute of limitations would have barred refund of the taxes collected during the latest period involved here (i. e., the quarter ended September 30, 1947).

On July 27, 1951, the district director's office again wrote to Mr. Greeno, referred to its prior letters of March 25, 1948, and March 30, 1950, and advised him to file a claim for refund limited to the amount which had not been barred by the statute of limitations. On August 14, 1951, the national office ruled in a letter to Mr. Greeno that employment on his project was exempt from tax under FICA and advised him to file claims for refund. At the time that the last 2 above-mentioned letters were written, it appears that Mr. Greeno still had more than 1 month in which to file a claim for refund of the FICA taxes for the last quarter involved here; i. e., July 1 through September 30, 1947.

A claim for refund of the FICA taxes in question was not filed until November 19, 1951, at which time the claims were barred by the statute of limitations.

From the information available to this Department it appears that Mr. Greeno was adequately informed as to the necessity for filing claims for refund of the taxes here involved.

Congress has determined it to be a sound policy to include in the revenue system a statute of limitations, by the operation of which, after a period of time, it becomes impossible for the Government to collect additional taxes or for the taxpayer to obtain refund for tax overpayments. The granting of special relief in the case of taxes erroneously collected, the refund of which is not claimed in the time and manner prescribed by law, constitutes a discrimination against other taxpayers similarly situated. The circumstances in this case would seem to furnish even more compelling reason for denying special relief.

For the reasons stated above, the Treasury Department is not in favor of the enactment of the proposed legislation.

The Director, Bureau of the Budget, has advised the Treasury Department that there is no objection to the presentation of this report.

Very truly yours,

DAN THROOP SMITH,
Deputy to the Secretary.

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